

Application No. 10/693,114  
Amendment dated December 6, 2007  
Reply to Office Action dated September 6, 2007

Amendments to the Drawings

Attached are three sheets of replacement drawings in improved form.

**REMARKS/ARGUMENTS**

Specification

Amendments to the specification correct minor errors and provide antecedent basis for claim limitations, without entering new matter.

The amendment to the second full paragraph at page 2 states the need for an alcohol breath test device per the disclosed invention.

The amendment to the paragraph bridging pages 3 and 4 corrects a typographical error at page 4, line 1, by changing "calculated" to --calculates--.

The amendment to the first full paragraph at page 4 inserts -- not -- at the fourth from last line to provide that opening the valve does not create a pressure pulse, consistent with the first sentence in the paragraph.

The amendment to the paragraph bridging pages 5 and 6 corrects a typographical error in the last line of the paragraph by changing "of" to --if--.

The amendment to the first full paragraph at page 6, third from the last line of the paragraph, provides that the passage 44 may be referred to as a branch passage or a pressure sensor passage, consistent with claim language.

The amendment to the second full paragraph at page 7 corrects a typographical error by changing "overly" to --overlie--.

The amendment to the third full paragraph at page 7 describes the operation of the solenoid 78 to shift valve 30 between first and second flow positions and provides antecedent basis for claiming the disclosed "two flow position valve" 30.

The amendment to the first full paragraph at page 8 improves the description by replacing "block" by --module--.

The amendment to the paragraph bridging pages 8 and 9 corrects a grammatical error by adding --, which-- at the end of line 8.

The amendment to the first full paragraph of page 10 corrects another typographical error by changing "additional" to --digital--.

The amendment to the paragraph bridging pages 10 and 11 deletes "and" from the last line of the paragraph.

Entry is solicited.

#### Amendments to the Claims

Non-elected claims 7-15, 23 and 24, have been cancelled.

Claims 1 and 16 have been amended to provide that the valve is a "two flow position" valve. This valve has an inlet and two outlets and alternately flows breath from the inlet through one outlet or through the other outlet.

The amendment to claim 16 adds a pressure sensor passage from the inlet passage to the sensor. This amendment is not made in response to a statutory rejection.

The amendments to previously presented dependent claims 25 and 26 improve the breath of the claims. These amendments are not made in response to statutory rejections.

Entry of amendments is solicited.

Amendment to the Drawings

The submitted substitute drawings are identical to the originally filed drawings but are in improved form without entering new matter. Approval and entry are solicited.

Claim Rejections - Section 102

Claims 1, 2, 5, 16, 17 & 22 are rejected as anticipated by Grammenthaler.

In response to the §102 rejections, Applicant has amended independent claims 1 and 16 to provide "a two flow position valve" which flows breath from an inlet and through one of first and second outlets. When the valve is shifted to one position, breath is flowed from the breath inlet passage through a fuel cell to determine alcohol content. When the valve is shifted to the other position, breath is flowed through the other outlet to atmosphere.

Reference Patent No. 6,026,674 discloses a breath test apparatus with a single flow position valve 20 which is either opened or closed by controller 22. The valve has one outlet only. When opened, breath from passage 30 is flowed through the fuel cell. When closed, no breath is flowed through the valve. The on-off valve 20 is different from Applicant's two flow position valve.

In view of the differences between the device of the '674 reference and devices of claims 1 and 16 Section 102 rejection is improper and must be withdrawn.

Additionally, regarding claim 16, the device of the '674 patent does not have a body with recesses and device components mounted in the recesses, as claimed.

Section 103 Rejection

Dependent claims 6 and 18-21 are rejected as unpatentable under §103 in view of the '674 patent.

Applicant submits these claims are allowable together with independent claims 1 and 16, as pointed out above.

The examiner has not established prima facie obviousness regarding claims 6 and 18-21.

Regarding claims 6 and 18-21, the reference does not disclose a body with a vent recess in the body or a cover on the body. The rejection hypothecates these claimed elements and then states that the hypothecated elements could "obviously" be combined somehow with the device disclosed in the '674 patent to meet the rejected claims. There is no factual basis for the asserted combination of asserted elements.

This form of rejection is speculation and is improper.

Reconsideration and withdrawal of the §103 rejections are solicited.

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Conclusion

The application is believed now in condition for allowance. Such favorable action is solicited.

Respectfully submitted,

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